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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

CARLOS PEREZ,

Plaintiff,

v.

J. JALOMO, et al.,

Defendants.

Case No.: 3:20-cv-02501-LL-AHG

ORDER:

(1) GRANTING IN PART AND DENYING IN PART DEFENDANT’S MOTION TO COMPEL, and

(2) GRANTING DEFENDANT’S ORAL MOTION TO EXTEND DISCOVERY DEADLINES

[ECF No. 34]

Before the Court is Defendant J. Jalomo’s (“Defendant”) Motion to Compel. ECF No. 34. Defendant seeks an order from the Court compelling Plaintiff Carlos Perez (“Plaintiff”), who is proceeding *pro se*, to provide responses to various interrogatories and requests for production. *Id.* For the reasons set forth below, the Court **GRANTS IN PART** and **DENIES IN PART** Defendant’s motion to compel.

1 **I. BACKGROUND**

2 On February 9, 2022, Defendant alerted the Court that the parties had a discovery
3 dispute. Email to Chambers (Feb. 9, 2022, at 9:40 AM). Specifically, Defendant noted that
4 he had propounded written discovery to Plaintiff, with a deadline of January 4, and Plaintiff
5 had not yet responded. *Id.* Defendant explained that he has been unable to reach Plaintiff,
6 despite multiple emails and voicemails. *Id.* Additionally, Defendant sought to schedule
7 Plaintiff’s deposition on a mutually agreeable date, but similarly had not heard back. *Id.*
8 Upon receipt of Defendant’s email, court staff responded, adding a third email address
9 known to be used by Plaintiff, and requested that Plaintiff respond to the email. Email from
10 Chambers (Feb. 9, 2022, at 11:26 AM). When Plaintiff had not responded by the
11 February 10 deadline, court staff left Plaintiff a voicemail on February 11. Court staff also
12 sent a second email to Plaintiff, referencing the voicemail and requesting response. Email
13 from Chambers (Feb. 11, 2022, at 10:24 AM). Plaintiff did not respond.

14 The Court found it appropriate to issue a briefing schedule, ordering that Defendant
15 file his motion to compel by March 1, 2022; Plaintiff file his opposition by March 15, 2022;
16 and Defendant file his reply by March 22, 2022. ECF No. 33. The Court also set a hearing
17 on the motion to compel for March 29, 2022, at 9:00 a.m. via videoconference. *Id.*

18 Defendant filed the instant motion to compel on March 1, in accordance with the
19 Court’s deadline. ECF No. 34. Plaintiff did not file an opposition. On March 18, Defendant
20 filed a Notice of Non-Opposition, reiterating that Plaintiff had not filed an opposition,
21 which was served on Plaintiff by mail. ECF No. 35. On March 25 and March 28, court staff
22 emailed Plaintiff reminders about the upcoming motion hearing, as well as the Zoom link.
23 Email from Chambers (Mar. 25, 2022, at 5:47 PM); Email from Chambers (Mar. 28, 2022,
24 at 5:15 PM). The Court held the motion hearing on March 29. ECF No. 36. Despite multiple
25 attempts to reach him by phone and email, Plaintiff failed to appear. *Id.*; *see, e.g.*, Email
26 from Chambers (Mar. 29, 2022, at 9:03 AM); Email from Chambers (Mar. 29, 2022, at
27 9:15 AM). After the hearing concluded, court staff emailed Plaintiff the minute entry, and
28 sent him a copy by mail as well. Email from Chambers (Mar. 29, 2022, at 3:21 PM); *see*

1 ECF No. 36 (“Motion Hearing held on 3/29/2022 re [ECF No.] 34 Defendant’s Motion to
2 Compel. Plaintiff Carlos Perez failed to appear”). To date, Plaintiff has not responded. This
3 order follows.

4 **II. DISCOVERY REQUESTS AT ISSUE**

5 The specific discovery requests at issue in the instant motion are Set One of
6 Defendant’s Interrogatories Nos. 1–24 and Set One of Defendant’s Requests for Production
7 of Documents (“RFP”) Nos. 1–12.¹ ECF No. 34-1 at 2, 5–10, 13–15. Defendant
8 propounded these discovery requests on December 2, 2021. *Id.* at 10–11, 15–16. Plaintiff’s
9 responses were due on January 4, 2022.² *Id.* at 3, 5; *see* FED. R. CIV. P. 6(d) (adding 3 days
10 when service is made by mail). When Plaintiff did not respond by the deadline, Defendant’s
11 counsel left voicemails for Plaintiff on January 31 and February 3, and emailed Plaintiff
12 on January 31, February 3, and February 8. ECF No. 34 at 3; ECF No. 34-1 at 18–19.
13 Plaintiff did not respond to Defendant’s messages and did not serve any discovery
14 responses.

15 **III. PLAINTIFF’S FAILURE TO OPPOSE DEFENDANT’S MOTION**
16 **TO COMPEL**

17 Pursuant to this Court’s briefing schedule, Plaintiff’s opposition was due on or
18 before March 15, 2022. ECF No. 33. To date, Plaintiff has not filed an opposition or notice
19 of non-opposition, as required by this district’s local rules. CivLR 7.1(f)(3)(a). Plaintiff
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22 ¹ In Defendant’s email correspondence, his counsel indicated that she wanted to schedule
23 Plaintiff’s deposition. However, his deposition was never noticed, and Defendant does not
24 seek to compel Plaintiff’s deposition in the instant motion.

25 ² The Court notes that though the Interrogatories served on Plaintiff set forth a 30-day
26 response deadline, the RFPs served on Plaintiff do not set forth any deadline. *See* ECF No.
27 34-1 at 13. However, pursuant to Rule 34, “[t]he party to whom the request is directed must
28 respond in writing within 30 days after being served.” FED. R. CIV. P. 34(b)(2)(A). Further,
Plaintiff was made aware of this deadline in emails from defense counsel. ECF No. 34-1
at 18–19.

1 also failed to appear at the motion hearing. ECF No. 36. Civil Local Rule 7.1 provides “[i]f
2 an opposing party fails to file [an opposition] in the manner required by Civil Local Rule
3 7.1.e.2, that failure may constitute a consent to the granting of a motion or other request
4 for ruling by the court.” CivLR 7.1(f)(3)(c). Since Plaintiff is proceeding *pro se*, the Court
5 notified the parties of this local rule in its briefing schedule, which was mailed and emailed
6 to Plaintiff on February 15, 2022. ECF No. 33 NEF; Email from Chambers (Feb. 15, 2022,
7 at 3:55PM); *see also* ECF No. 33 (quoting CivLR 7.1(f)(3)(c)).

8 Since Plaintiff has failed to oppose Defendant’s motion to compel, on this ground
9 alone, the Court could grant the motion. *See Ghazali v. Moran*, 46 F.3d 52, 54 (9th Cir.
10 1995) (affirming dismissal for failing to oppose a motion to dismiss, based on a local rule
11 providing that “[t]he failure of the opposing party to file a memorandum of points and
12 authorities in opposition to any motion shall constitute consent to the granting of the
13 motion”); *see, e.g., Chambers v. Janssen Pharms., Inc.*, No. 16cv762-JAH-BLM, 2018 WL
14 2193356, at *3 (S.D. Cal. May 14, 2018) (granting defendant’s motion to compel responses
15 to interrogatories and RFPs because, “by failing to oppose Defendant’s motion to compel,
16 Plaintiff has consented to the granting of the motion”).

17 Plaintiff’s *pro se* status does not exempt him from the Court’s deadlines or this
18 district’s local rules. “In general, *pro se* representation does not excuse a party from
19 complying with a court’s orders and with the Federal Rules of Civil Procedure.” *Hupp v.*
20 *San Diego County*, No. 12cv0492 GPC-RBB, 2014 WL 1404510, at *2 (S.D. Cal. Apr. 10,
21 2014). Accordingly, parties who choose to represent themselves are expected to follow the
22 rules of the court in which they litigate. *Bias v. Moynihan*, 508 F.3d 1212, 1223 (9th Cir.
23 2007) (quoting *Carter v. Comm’r*, 784 F.2d 1006, 1008–09 (9th Cir. 1986)). “[W]hile *pro se*
24 litigants may be entitled to some latitude when dealing with sophisticated legal issues,
25 acknowledging their lack of formal training, there is no cause for extending this margin to
26 straightforward procedural requirements that a layperson can comprehend as easily as a
27 lawyer.” *Dewidar v. Nat’l. R.R. Passenger Corp.*, No. 17cv62-CAB-RBB, 2018 WL
28 280023, at *3 (S.D. Cal. Jan. 3, 2018) (quoting *Jourdan v. Jabe*, 951 F.2d 108, 109 (6th

1 Cir. 1991)).

2 **IV. MERITS OF DEFENDANT’S MOTION**

3 District courts have broad discretion to manage discovery. *Laub v. United States*
4 *DOI*, 342 F.3d 1080, 1093 (9th Cir. 2003); *Hallett v. Morgan*, 296 F.3d 732, 751 (9th Cir.
5 2002). This discretion extends to crafting discovery orders that may expand, limit, or differ
6 from the relief requested. *See Crawford-El v. Britton*, 523 U.S. 574, 598 (1998); *UMG*
7 *Recordings, Inc. v. Doe*, No. C 08-1038 SBA, 2008 WL 2949427, at *3 (N.D. Cal. Jul. 30,
8 2008).

9 Although the Court may grant Defendant’s motion as unopposed, the Court shall
10 briefly examine the merits so as not to compel improper discovery. *See, e.g., Black*
11 *Mountain Equities Inc. v. Players Network Inc.*, No. 18cv1745-BAS-AHG, 2020 WL
12 2097600, at *3 (S.D. Cal. May 1, 2020) (noting that the court could have granted plaintiff’s
13 motion to compel because the defendant failed to file an opposition, but opted to
14 additionally address the merits of the motion).

15 Here, Defendant seeks to compel responses to Interrogatories Nos. 1–24 and RPF
16 Nos. 1–12. The Court will address these in turn.

17 **A. Interrogatories**

18 “Unless otherwise stipulated or ordered by the court, a party may serve on any other
19 party no more than 25 written interrogatories, including all discrete subparts.” FED. R. CIV.
20 P. 33(a)(1). Although Rule 33(a) states that “discrete subparts” should be counted as
21 separate interrogatories, it does not define that term. *Safeco Ins. Co. of Am. v. Rawstron*,
22 181 F.R.D. 441, 442–43 (C.D. Cal. 1998). However, “courts generally agree that
23 ‘interrogatory subparts are to be counted as one interrogatory ... if they are logically or
24 factually subsumed within and necessarily related to the primary question.’” *Trevino v.*
25 *ACB Am., Inc.*, 232 F.R.D. 612, 614 (N.D. Cal. 2006) (quoting *Safeco*, 181 F.R.D. at 445).
26 Determining whether the subparts of an interrogatory are discrete requires a case-specific
27 and interrogatory-specific assessment. *Synopsys, Inc. v. Atoptech, Inc.*, 319 F.R.D. 293,
28 295 (N.D. Cal. 2016).

1 Here, Defendant seeks to compel responses to Interrogatories Nos. 1–24. *See* ECF
2 No. 34-2 at 5–10. Though seemingly below the 25-interrogatory limit, upon further review,
3 the Court finds that certain requests have discrete subparts that exceed the limit. For
4 example, Interrogatory No. 17 states: “If YOUR response to any Request for Admission,
5 Set One, from defendant J. Jalomo is anything but an unqualified admission, please state
6 all facts that support YOUR response to each such Request for Admission.” ECF No. 34-
7 1 at 8. Interrogatory No. 18 similarly seeks “identif[ication of] all persons which
8 knowledge of facts that support YOUR response to each such Request for Admission” and
9 Interrogatory No. 19 similarly seeks “identif[ication of] all DOCUMENTS that contain
10 facts that support YOUR response to each such Request for Admission.” *Id.* at 9. Though
11 Defendant’s motion does not include the number of Requests for Admission (“RFA”)
12 served, during the hearing, Defendant responded that he served 6 RFAs. ECF No. 36
13 at 03:01.

14 The Court deems each reference to a RFA response as a discrete subpart to
15 Interrogatories No. 17–19.³ *See Safeco*, 181 F.R.D. at 446 (denying motion to compel
16 responses to interrogatories which sought explanation of RFA responses because they
17 violated the numerical limit, explaining that “an interrogatory that asks the responding
18 party to state facts, identify witnesses, or identify documents supporting the denial of each
19 request for admission contained in a set of requests for admissions usually should be
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22 ³ The Court notes that the text of the RFAs served were not provided as exhibits to the
23 instant motion. The Court’s analysis, however, remains unchanged. *See Safeco*, 181 F.R.D.
24 at 446 (“a strong presumption that each underlying request for admission constitutes a
25 separately countable subpart should be adopted”); *see also id.* at 445 (“Allowing service of
26 an interrogatory which requests disclosure of all of the information on which the denials of
27 each [] request[] for admissions were based, however, essentially transforms each request
28 for admission into an interrogatory. This is not the purpose requests for admissions were
intended to serve, and because Rule 36 imposes no numerical limit on the number of
requests for admissions that may be served, condoning such a practice would circumvent
the numerical limit contained in Rule 33(a)”).

1 construed as containing a subpart for each request for admission contained in the set.”).

2 Thus, Interrogatories 17–19 each count as 6 interrogatories toward the 25-request
3 limit. As such, for the reasons set forth in the hearing, the Court **GRANTS** Defendant’s
4 motion to compel as to Interrogatories Nos. 1–16, and **DENIES without prejudice**
5 Defendant’s motion as to the subject matter of Interrogatories No. 17–22. Defendant may
6 re-serve requests that were not compelled, as long as the total does not exceed the 25-
7 interrogatory limit.

8 **B. Requests for Production**

9 Defendant seeks to compel responses to RFP Nos. 1–12. The Court has reviewed the
10 production requests and finds them relevant and proportional. However, RFP No. 6 seeks
11 “DOCUMENTS identified in YOUR response to Interrogatory Number 19 from defendant
12 J. Jalomo.” ECF No. 34-1 at 14. Since the Court is not compelling a response to
13 Interrogatory No. 19 at this time, RFP No. 6 is not applicable. Thus, the Court **GRANTS**
14 Defendant’s motion to compel as to RFP Nos. 1–5 and 7–12, and **DENIES without**
15 **prejudice** Defendant’s motion as to RFP No. 6.

16 **C. Discovery Deadlines**

17 During the hearing, in light of counsel’s preference to take Plaintiff’s deposition
18 after receiving discovery responses, Defendant made an oral motion to extend the fact
19 discovery cutoff date. ECF No. 36 at 05:34. Good cause appearing, the Court **GRANTS**
20 Defendant’s oral motion. The Court will extend the case management deadlines in a
21 separately filed amended scheduling order.

22 **V. CONCLUSION**

23 For the reasons set forth above, the Court **GRANTS IN PART** Defendant’s motion
24 to compel as follows:

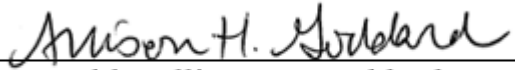
- 25 1. The Court **ORDERS** that Plaintiff serve responses to Interrogatory Nos. 1–16
26 by **July 8, 2022**.
- 27 2. The Court **ORDERS** that Plaintiff serve responses to RPF Nos. 1–5 and 7–12
28 by **July 8, 2022**.

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3. The Court reminds Plaintiff of his obligations to respond to discovery in this case. *See* Fed. R. Civ. P. 37(b)(2)(A).

IT IS SO ORDERED.

Dated: June 22, 2022



Honorable Allison H. Goddard
United States Magistrate Judge